IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11903 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANBHAI SHANTIBHAI VAGHELA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 11903 of 2004

MR SATISH R PATEL for Petitioner No. 1

MR KIRAN R JANI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 23rd August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 23rd August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the facts of filing of solitary case against the petitioner before Prohibition Police Station, Northern Zone, Ahmedabad under the Bombay Prohibition Act on 20th May, 2004. It was alleged that the petitioner was found in possession of 375 ltrs. of country liquor. The detaining authority exhaustively and thoroughly examined the investigation papers in the said crime and came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited country liquor. In view of the detaining authority, the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health and, therefore, the petitioner was a bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the bootlegging activities of the petitioner were required to be prevented forthwith. After taking into consideration other remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed an order of detention of the petitioner, which is subject matter of challenge in this petition.

3. Learned advocate Mr.S.R.Patel for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record by the learned AGP was also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that the petition can be examined and disposed of on the sole issue that whether the order of detention is vitiated by non-application of mind by the detaining authority to the relevant material.

5. As it is evident from the grounds of detention that on the date of execution of detention order, the petitioner was in judicial custody in the crime registered against him. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody, was likely to move an application for bail and on so moving an application for bail, he was likely to be released on bail. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner on bail, he was likely to continue his illegal activities.

6. The facts of this case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. In the present case, undoubtedly the petitioner had not moved any bail application whatsoever. Even an application for bail, is not a cogent material to infer that the petitioner was likely to be released on bail. In fact, in the present case, there was no material at all before the detaining authority to draw the inference that the petitioner was likely to be released on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that the petitioner was likely to be released on bail and was likely to continue his illegal activities, is not based on any material. Therefore, the subjective satisfaction arrived at by the detaining authority in this respect is not valid, legal and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

8. In the result, in view of the above discussion, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 23rd August, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Laxmanbhai Shantibhai Vaghela is hereby ordered to be set at liberty forthwith if he is not required to be

detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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